

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20

PROGRESS FOUNDATION

Employer

and

BROTHERHOOD OF TEAMSTERS AND
AUTO TRUCK DRIVERS LOCAL 85, IBT

Case 20-RC-17950

Petitioner

and

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 535, AFL-CIO

Intervenor

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer and the Petitioner stipulated,¹ and I find, that the Employer is a private non-profit corporation with offices and places of business in San Francisco and Napa Counties, engaged in the business of providing residentially based psychological rehabilitation and mental health services. During the calendar year ending December 31, 2003, the Employer derived gross revenue in excess of \$100,000 and purchased and received at its facilities goods and services valued in excess of \$5,000 which originated from points outside the State of California. Based on this stipulation, I find that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes and policies of the Act to assert jurisdiction in this matter.

3. The Employer and the Petitioner stipulated, and I find, that the Petitioner and the Intervenor are each a labor organization within the meaning of the Act.

4. As discussed more fully below, the record establishes that the most recent collective-bargaining agreement (the Agreement), between the Employer and the Intervenor was effective from July 1, 2000, through June 30, 2003, and has been extended for a period of one year only by an oral agreement. Thus, there is no contract bar in this proceeding.

¹ The Intervenor was not party to the stipulations entered into in this case. It was granted status as a participating intervenor based on a less than ten percent showing of interest and on its status as a representative of employees other than those being petitioned for as a residual unit. See NLRB Casehandling Manual (Part Two). Representation Proceedings Sections 11023.3 and 11023.5. Such status does not allow a participating intervenor to block stipulations entered into by the other parties to a proceeding. Although the Board has granted a limited exception to Section 11023.5 to the extent that an intervenor of other employees in a residual unit situation may be included on the ballot without having to make a showing of interest, the Board's holding does not appear to extend to giving intervenors the right to block stipulations by the other parties to such cases. See *St. Mary's Duluth Clinic Health System*, 332 NLRB 1419, 1422 (2000).

5. The Petitioner seeks to represent a residual unit of on-call relief counselors and office clerical employees employed by the Employer at its San Francisco and Napa, California facilities.² At the time of the hearing, the Employer employed about 80 on call relief counselors and about 15 office clerical employees. The Employer and the Intervenor contend that the petition should be dismissed, asserting that to the extent the petitioned-for relief counselors are not casual employees, they are regular part-time counselors who should be included in the unit represented by the Intervenor by definition or deemed an accretion to the unit. Approximately 120 employees are covered under the Agreement, including all full-time and regular part-time case managers, counselors and agency relief counselors. It is undisputed that the petitioned-for employees have never actually been represented by the Intervenor, even though they are in classifications listed in the Board certifications and, by reference to those certification, in the recognition clause of the most recent agreement between the Employer and the Intervenor. For the reasons discussed below, I find that the petitioned-for unit, as modified herein, is an appropriate residual unit within which to conduct an election, under the Board's decision in *St. Mary's Duluth Clinic Health System, supra*, 332 NLRB 1419.

Prior Board Certifications and Collective-Bargaining History. On November 10, 1980, the Intervenor, under the name Social Services Union Local 535, Service

² The record reflects that at the time of the hearing, the Employer operated the following facilities in San Francisco: La Posada at 810 Capp Street; Progress House at 25 Beulah Street; Ashbury House at 212 Ashbury Street; the Avenues House at 1443 7th Avenue; Carroll House at 73 Anderson Street; the Supported Living Program at 7002 Geary Boulevard; La Amistad at 2481 Harrison Street; Shrader House at 50 Shrader Street; Clay Street House at 2210 Clay Street; Rypins House at 1405 Guerrero Street and Cortland House at 77 Cortland Street; the Diversion Evaluation Team at 52 Shrader Street. The Employer also operated three facilities in Napa: Progress Place and Randolph House at 720-730 Randolph Street; and Laurel House at 3133 Laurel Street in Napa. The Employer's administrative offices are located at 368 Fell Street in San Francisco.

Employees International Union, AFL-CIO, was certified by the Board in Case 20-RC-15179, in the following unit of employees of the Employer:

All full-time and regular part-time professional employees including senior counselors and job developers and all full-time and regular part-time non-professional employees including counselors and co-op counselors, office clerical employees, and maintenance employees employed by the Employer at its facilities in San Francisco, California, located at 48 and 50 Shrader Street, 810 Capp Street, 2481-3 Harrison Street, 1405 Guerrero Street, 73 Anderson Street, and 25-27 Beulah Street, and who may be assigned to other existing locations currently operated by the Employer; excluding all other employees, vocational rehabilitation counselors, guards and supervisors as defined in the Act.

On July 23, 1982, the Intervenor, under the same predecessor name as above, was certified in the following unit in Case 20-RC-15519:

All full-time and regular part-time employees, including senior counselors, job developers, counselors, and co-op counselors employed by the Employer at its 77 Courtland Avenue facility in San Francisco, California; excluding all other employees, employees otherwise covered by a collective-bargaining agreement, guards and supervisors as defined in the Act.

Since the certifications in 1980 and 1982, the record shows that the Employer and the Intervenor have had a series of collective-bargaining agreements, the most recent of which, the Agreement, was effective through June 30, 2003, and which has been extended for a one year period by an oral agreement between the Employer and the Intervenor. The recognition clause of the Agreement states that the Employer recognizes the Intervenor as the collective-bargaining representative for all employees certified in Cases 20-RC-15179 and 15519. However, the record shows that the Employer has extended the coverage of these agreements, including the most recent Agreement, to

employees working at all of its facilities in San Francisco and Napa, California, with the exception of the on call relief counselors and office clerical employees at issue herein.

Although the Board certifications and the series of collective-bargaining agreements between the Employer and the Intervenor, including the Agreement, have included, by reference to the Board certifications, *inter alia*, all full-time and regular part-time counselors and office clerical employees, the record shows that the Employer and the Intervenor have never, in fact, treated their agreements as covering on call relief counselors or any of the Employer's office clerical employees, even though these classifications of employees existed at the time of the Board certifications and their initial collective-bargaining agreements. One exception to the exclusion of these two classifications is the Employer's creation of a new classification called "agency relief counselor" in approximately July 2001, which the Employer has treated as covered under the Agreement. As discussed below, agency relief counselors cover longer term planned absences by regular counselors. At the time of the hearing, there were approximately four agency relief counselors covered under the Agreement.

The Employer's and Intervenor's witnesses at the hearing could recall no disputes or any express understanding between the Employer and the Intervenor regarding the *de facto* exclusion of these two groups of employees from coverage under their agreements. With regard to the on call relief counselors, Employer Executive Director Fields offered that the early agreements entered into with the Intervenor contained only a salaried pay scale and included no hourly wage rate, thus making evident the exclusion of the hourly paid relief counselors from such agreements. With regard to the office clerical employees, Intervenor Field Representative Mark Stanford testified that he had been

unaware that these employees were even included in the unit description until he had recently seen the Board certifications, apparently in connection with these proceedings. With regard to the on call relief counselors, Stanford testified that in November 2003, when he was approached by an on call relief counselor asking whether the Intervenor would represent that group of employees, he offered representation, but only to the extent of expressing a willingness to try and convince the Employer to include more of the on call relief counselors under the Agreement who were working the twenty hours a week that the Employer required in order to classify them as regular part-time employees.³

The record also shows that the on call relief counselors formed their own association, called the Relief Counselors Association, in late 2002, which met with the Employer on about three occasions before they were informed that the Employer would not continue to meet with them.

The record further establishes that of the other classifications listed in the Board certifications and by reference in the Agreement, the Employer no longer employs maintenance employees but rather subcontracts out such work. The record further reflects that there are no employees in the classifications of job developer, senior counselor and co-op counselor and that these positions are subsumed under the overall classifications of case manager and/or counselor.

In sum, at the time of the hearing, the Intervenor represented a unit of all full-time and regular part-time employees at all of the Employer's facilities, including case managers, counselors, agency relief counselors, and which, by historical practice,

³ Stanford testified that he would also try to convince the Employer to guarantee the hours of such employees. The Employer's witnesses did not testify about what the Employer required before it would consider an on call counselor a regular part-time counselor included under the Agreement.

excluded office clerical employees and on call relief counselors. Approximately 120 employees are covered under the Agreement. At the time of the hearing, the Employer also employed about 80 on call relief counselors and approximately 15 office clerical employees. The on call relief counselors and the office clerical employees appear to comprise all of the unrepresented non-managerial, non-supervisory employees of the Employer who are in the classifications included by name in the Board certifications and in the Agreement, through reference to the Board certifications, but which have not been covered by the Agreement.

The Employer's Operation and Hierarchy. The Employer is a health care employer that provides residentially-based psychological rehabilitation and mental health services at the facilities noted above, which are located in San Francisco and Napa, California. The Employer operates programs providing three levels of residential care: acute diversion, transitional and supportive. The acute diversion program includes four facilities that take patients directly from psychiatric hospitals. These programs operate twenty-four hours a day, seven days a week. The Employer's transitional level programs include two programs that provide services to adults ages 16 to 64; a program at its Clay Street, San Francisco facility that provides services to sixteen clients who have been transferred to that program from long-term skilled nursing facilities; and a seniors program, which includes two residences and a day treatment program for clients who are age 55 and older. The Employer also operates Ashbury House, which is a residential treatment program for up to ten mothers who are suffering from severe mental illness and whose children live with them during their course of treatment. Finally, the Employer

offers supportive care, consisting of about twelve to fourteen leased apartments and four permanent housing developments located in San Francisco.

The Employer is headed by a board of directors and its executive director is Steven Fields. Reporting to Fields is a chief financial officer and reporting to the chief financial officer are about fifteen office clerical employees, including receptionists, data input employees, bookkeeper/clerks, clerks and administrative aides who work at the Employer's administrative office in San Francisco.

Also reporting to Executive Director Fields are two directors of clinical services, one for the Employer's San Francisco facilities and one for its Napa facilities. In San Francisco, there are two deputy clinical directors who report to the clinical director for San Francisco. At its Napa facilities, there are no deputy clinical directors; rather, the three program directors report directly to the clinical director.

The Counselors, Agency Relief Counselors and Relief Counselors. The Agency's regular counselors, who are covered under the Agreement, provide coverage, treatment, intervention and support services to clients within the Employer's residential acute diversion programs which operate 24 hours a day, seven days a week. In order to maintain the minimum level of staffing required under the law at all times in such programs, the Employer relies on its on call relief and agency relief counselors to fill in when its regular counselors are absent. On call relief counselors are individuals whose names are on an active relief list maintained by the Employer. On call relief counselors fill in, sometimes on short notice, for regular counselors when an unexpected absence occurs. They also fill in for planned absences by regular counselors. As indicated above,

the Employer employs about 65 relief counselors on its active on call list for its San Francisco facilities and about 15 on its on call list for its Napa facilities.

As indicated above, the Employer created the position of agency relief counselor in about July 2001, in order to fulfill its need for continuity of care in cases of longer planned absences by regular counselors. The agency relief counselor takes over the clients of the regular counselor who is absent and performs all of the regular counselor's duties. As indicated above, at the time of the hearing, four agency relief counselors were covered under the terms of the Agreement.⁴

Job Descriptions and Qualifications. The record includes job descriptions for the counselor position and relief counselor position.⁵ There is no separate job description for the agency relief counselor position and the job description for the counselor position also applies to that position. Regular counselors and agency relief counselors must have a bachelor's degree in the mental health field or equivalent experience; this is only a preferred requirement for the on call relief counselors. The Employer also prefers to hire persons for regular counselor positions that have specific experience in residential treatment and/or knowledge of social rehabilitation and at least one year of experience in community mental health programs. This is not required for on call relief counselors, many of whom are students or are new to the field when they take the job. Both the regular counselors and agency relief counselors are required to possess a valid California driver's license and be insurable so that they can drive clients in Employer vehicles. The

⁴ The record reflects that the Employer did not negotiate with the Union concerning these employees but, rather, notified the Union that the position had been created and that the Employer was going to include it under the Agreement.

⁵ The qualifications, duties and the functions of the case manager are not set forth in the record.

on call relief counselors do not need to meet this requirement and they are not allowed to drive clients or use Employer vehicles. The three groups share similar qualification requirements with regard to possessing effective communication abilities; an acceptable level of maturity; the ability to walk up several flights of stairs; and an ongoing clearance from the California Department of Social Services, Community Care License Division, which allows them to have direct access to clients.

It appears that most but not all of the regular counselors and agency relief counselors, possess a Mental Health and Rehabilitation Service (MHRS) certification, which is required by Medi-Cal/Medicaid. This certification requires an employee to have a certain number of hours of training and experience in residential mental health work. The significance of this certification is that it allows the counselor to sign off on client progress reports and other documents without requiring a co-signature by the program director or assistant director or another counselor possessing this certification. The record shows that of the approximately 65 on call relief counselors on the Employer's active on call list for its San Francisco facilities, approximately nine possess the MHRS certification.

The Functions of Counselors and On Call Relief Counselors. The major differences between the functions of the regular counselors and on call relief counselors relate to the greater responsibility of the regular counselors for the clinical aspects of client care, including handling intake interviews and the admission of new clients to facilities; the development of treatment plans for clients; implementing client treatment plans and the coordination and continuity of client care; signing and maintaining progress notes regarding client treatment plans; monitoring and recording client medications;

completing intake and discharge paperwork on clients; and driving clients in Employer vehicles. The functions of the two groups also overlap in many respects, including generally assisting clients, writing progress notes; leading activities with clients; assisting with the dispensing of medications to clients; assisting with meals; attending supervision sessions and case consultation meetings; maintaining the physical plant; and complying with all applicable laws and regulations.

Hiring and Training. The Employer's hiring process for the counselors, contract relief counselors and relief counselors differs. The Employer does little external advertising or posting to find on call relief counselors. Rather, most are contacted after being referred to the Employer by current staff members or by other persons in the field. The Employer holds a meeting each month to orient and to interview persons interested in applying for the on call counselor position. At these meetings, the Employer shows applicants a video about the Employer's programs and how on call relief counselors are utilized in those programs. Then the Employer's program directors and assistant program directors interview the applicants. After the interviews, the Employer notifies the applicants if it is interested in offering them on call work. Applicants must then complete federal and state required paperwork, be fingerprinted and undergo a background check and a medical examination. Applicants must also undergo training on client care, safety and other job responsibilities. Lastly, they work an unpaid "shadow" shift at one of the Employer's facilities, and are then officially hired by the Employer and placed on its roster of active relief counselors.

Regular counselors are recruited by the Employer and interview at both the Employer's administrative office and with the program director or assistant director of

the facility where they are going to work. Once a regular counselor is hired, they do not work a “shadow shift” as do the on call relief counselors but are instead provided in house training by the Employer. According to Fields, their hiring process is much more thorough than that of the relief on call counselors.

Case managers, regular counselors and agency relief counselors, all of whom are represented by the Intervenor, must have regular ongoing clinical training as required under the law and they are paid for the time they spend in such training. The petitioned-for on call relief counselors are not required to have such training and they are not paid if they choose to attend such training sessions.

A substantial number of the Employer’s regular counselors were formerly on call relief counselors. Thus, in the current fiscal year, twelve of the thirty regular counselors hired or 47% had previously been on call relief counselors; in the fiscal year 2002-2003, 19 of 39 regular counselors hired or 49% had been on call relief counselors; and in fiscal year 2001-2002, 17 of the 61 regular counselors hired or 28% had previously been on call relief counselors. Regular counselors also become on call relief counselors. In this regard, at the time of the hearing, at least eleven of the approximately 80 on call relief counselors had previously been regular counselors.

Supervision. Each facility or house of the Employer has a program director and at least one assistant director; the acute diversion programs have two assistant directors at each house. Each house may have up to twelve regular counselors. The record shows that the regular, agency relief and on call relief counselors are all supervised by the program director and assistant program director of the facility where they work. The program directors are ultimately responsible for what takes place in their respective

facilities and both the program directors and assistant directors provide clinical and other supervision over all employees working in their facility.

On call relief counselors are also assigned to another supervisor who oversees them throughout their employment. Generally, that supervisor is the program director or assistant program director of the facility where they first received their orientation after being hired. At times, the on call relief counselors also receive instructions from regular counselors at the facility where they are assigned, but there is no showing in the record that the regular counselors have any supervisory authority over the relief counselors and no party has raised such a contention.

All counselors, including the on call relief counselors, receive annual written appraisals. Regular counselors and agency relief counselors also receive a monthly written supervisory report from their designated supervisor.

Relief counselors may be terminated for performance-related reasons; however they are not subject to the grievance provisions of the Agreement. The Employer has established a Committee on Responsible Relief Counseling (herein called the Committee), which is staffed by administrators and practitioners. This Committee meets on a monthly basis and reviews issues concerning relief counselors, including issues related to their performance and disciplinary matters involving them. In this regard, the record contains a form, called a "Relief Counselor Action Notice," which is written up by a program director or assistant program director and submitted to the Employer's human resources department for review by the Committee. The Committee does not review matters involving regular counselors or agency relief counselors.

The On Call Relief Counselor List. The Employer maintains an active list of on call relief counselors and it does not call any persons for on call relief work other than the persons on this list or the agency relief counselors described above. The active list is maintained at the Employer's central office and each month it is updated and forwarded to the program sites. In updating the list, the Employer notes if the employee has worked a shift in the preceding six months. If he or she has not worked in that time, the Employer contacts the employee by telephone and/or mail and notifies the employee that they must contact the Employer within two weeks in order to remain on the active list. If the on call relief counselor does not contact the Employer within two weeks, the individual is struck from the active list and his or her employment is terminated. Once a relief counselor is struck from the active list, he or she may not get back onto the list without reapplying for the position. On call relief counselors may turn down assignments and remain on the list, subject to this procedure.

Once on the active list, on call relief counselors receive calls from the program director or assistant program director of the Employer's facilities requesting them to fill in for regular counselors who are absent. At times, on call regular counselors also contact relief counselors to ask if they can work on a particular shift. In addition, the record shows that some on call relief counselors contact the facilities directly in order to determine if work is available. At times, relief counselors are scheduled to work several shifts during the same week. According to Executive Director Fields, the Employer has no written procedures for calling on call relief counselors to work.

Locations, Hours and Regularity of Work. The regular counselors, agency relief counselors and on call relief counselors all work together at the same locations, that is, at

the eight houses, co-ops and other programs of the Employer. However, the regular counselors are permanently assigned to a single facility and the agency relief counselors tend to work at a single facility for longer periods of time than do the on call relief counselors who may be assigned for only a brief period to a facility.

The shifts of the regular counselors and agency relief counselors are generally eight or ten hours long and the regular counselors work forty hours a week; the shifts of the on call relief counselors are generally eight or fewer hours, depending on the Employer's needs.

The record contains Employer records, which show the number of hours worked by the on call relief counselors on a quarterly basis for the fiscal year 2003-2004 (July 2003-June 2004), and the programs in which they have worked. These records show that approximately 35 of the 61 employees on the active on call relief counselor list for San Francisco worked an average of four or more hours per week for the most recent quarter of January through March 2004.⁶ Approximately 21 of these same 35 employees also worked an average of over four hours on average for the preceding two quarters or, in other words, throughout the period from July 1, 2003, through March 2004.

Salary and Benefits. The regular counselors and agency relief counselors are paid a salary and receive benefits, including medical, vision, dental etc., as set forth in the Agreement. Relief counselors fill out a timesheet and are hourly paid at a rate of \$10 an hour and receive no benefits. They are paid at the same time as regular counselors and their paycheck includes withholdings for social security and taxes. Office clericals who

⁶ The record includes no utilization records for the Napa on call relief employees.

work sufficient hours receive certain benefits, such as medical, dental and vision and an investment plan, which are similar to the benefits provided for under the Agreement, but such benefits are paid to them by the Employer and not pursuant to the Agreement.

Analysis. As indicated above, the Petitioner seeks to represent a residual unit of relief on-call counselors and office clerical employees employed by the Employer at its San Francisco and Napa, California facilities. The Employer and the Intervenor contend that the petition should be dismissed, asserting that to the extent the relief counselors are not casual employees, they are regular part-time counselors who should be included in the unit represented by the Intervenor by definition or be deemed an accretion to the unit.

In *St. Mary's Duluth Clinic Health System*, 332 NLRB 1419, the Board held that a nonincumbent union may petition to represent a separate residual unit of employees that are not covered in an existing nonconforming unit, so long as the petitioned-for unit is an appropriate residual unit, meaning that it must include all of the unrepresented employees in the particular classification or classifications at issue. *Id.* at 1421.

In the instant case, the issue is whether, in a health care setting, where there is a nonconforming unit that covers all full-time and regular part-time employees at all Employer locations, and thus is broader in scope than the units that would constitute appropriate units under the Board's Health Care Rule, a nonincumbent union may petition for a separate residual unit, which consists of employees who are in classifications listed on the face of the Board certifications and in contractual agreements between the Employer and the incumbent Intervenor, but which have not been represented under those agreements during more than twenty years of collective-bargaining history. I have concluded that under the circumstances presented herein, the

unit petitioned for is an appropriate residual unit within which to conduct an election. Thus, from the record it appears that the on call relief counselors and the office clerical employees comprise all of the unrepresented non-managerial, non-supervisory employees of the Employer who are in the classifications included by name in the Board certifications and in the Agreement, but which have not been covered by the Agreement.

In reaching my conclusion that the petitioned-for unit is an appropriate residual unit, I have carefully considered the arguments of the Employer and Intervenor that to the extent the petitioned-for employees are regular part-time employees, they should be included in the unit represented by the Intervenor either by definition or through accretion because they are set forth in the Board certifications and by reference in the Agreement. I have also considered that the on call relief counselors plainly share a substantial community of interest with the employees in the contractual unit, given that both groups perform many of the same functions, at the same locations, under the same supervision, and that the Employer hires many of its regular counselors from their ranks. However, in this situation, where these employees have never, in fact been represented by the Intervenor, and it is not clear what the Intervenor's intentions are with regard to representing them in the future, I find that ordering an election in the residual unit will better serve the Section 7 interests of the employees involved, who may otherwise continue to go unrepresented. *Id.* at 1421.⁷ My decision will certainly not result in a proliferation of bargaining units in the health care industry. For with regard to this Employer, it appears that there are potentially only two units of its employees for the

⁷ I also note that the size of the group of nonrepresented employees at issue herein would preclude an accretion in this case.

foreseeable future. And I further observe, as did the Board in *St. Mary's* with regard to the circumstances presented in that case, that the situation presented herein is an unusual occurrence, which I anticipate will rarely present itself in the future. *Id.* at 1421. Finally, as discussed below, the Intervenor will be accorded the right to be on the ballot in the election that I am directing and the nonrepresented employees will thus be given the choice between the Petitioner and the Intervenor or having no union representation.

Conclusion. In conclusion, I find that the following petitioned-for unit, as modified, is an appropriate residual unit:

All full-time and regular part-time on-call relief counselors and office clerical employees employed by the Employer at its San Francisco and Napa, California facilities; excluding employees represented by other labor organizations, guards and supervisors as defined by the Act.

The Intervenor has not indicated whether it wishes to be included on the ballot in this election. It is hereby given seven days to provide notice to the Regional Office that it wishes to be placed on the ballot. In this regard, under *St Mary's Duluth*, the Intervenor may be included on the ballot without a showing of interest, provided that it gives the Regional Office timely notice of its intention in this regard. *Id.* at 1422.

I find that the following employees constitute the proper Voting Group for purposes of conducting this election.

All full-time and regular part-time on-call relief counselors and office clerical employees employed by the Employer at its San Francisco and Napa, California facilities; excluding employees represented by other labor organizations, guards and supervisors as defined by the Act.

If the Intervenor indicates in a timely manner its desire to be included on the ballot, the election will be directed as follows:

Employees in the Voting Group will be asked to vote:

1) Do you desire to be represented for purposes of collective bargaining by

Brotherhood of Teamsters and Auto Truck Drivers Local 85, IBT in the following unit of employees?

All full-time and regular part-time on-call relief counselors and office clerical employees employed by the Employer at its San Francisco and Napa, California facilities; excluding employees represented by other labor organizations, guards and supervisors as defined by the Act.

2 Do you desire to be represented by Service Employees International Union,

Local 535, AFL-CIO, in the following unit that it currently represents:

All full-time and regular part-time employees, including case managers, counselors and agency relief counselors employed by the Employer at its San Francisco and Napa, California facilities; excluding guards and supervisors as defined by the Act.

If the Intervenor declines to be included on the ballot, then the employees in the Voting Unit will be asked the following question:

1) Do you desire to be represented for purposes of collective bargaining by

Brotherhood of Teamsters and Auto Truck Drivers Local 85, IBT in the following unit of employees?

All full-time and regular part-time on-call relief counselors and office clerical employees employed by the Employer at its San Francisco and Napa, California facilities; excluding employees represented by other labor organizations, guards and supervisors as defined by the Act.

In determining the part-time status of the on call relief counselors for purposes of this election, the Board will apply its standard eligibility formula for on call employees, which requires such employees to regularly average four or more hours of work per week

during the quarter immediately preceding the eligibility date. See *Trump Taj Mahal Casino*, 306 NLRB 86 (1992); *Davison-Paxon Co.*, 185 NLRB 21 (1970).

The ultimate determination will be based on the results of the election. However, the following findings are made with regard to the appropriate unit. If a majority of ballots are cast for Petitioner, then the Board will issue a certification of representative status to Petitioner in the following unit of employees:

All full-time and regular part-time on-call relief counselors and office clerical employees employed by the Employer at its San Francisco and Napa, California facilities; excluding employees represented by other labor organizations, guards and supervisors as defined by the Act.

If a majority of ballots are cast for Intervenor, then the Board will issue a certification to the Intervenor in the following appropriate unit:

All full-time and regular part-time employees, including case managers, counselors, agency relief counselors, on call relief counselors and office clerical employees employed by the Employer at its San Francisco and Napa, California facilities; excluding guards and supervisors as defined by the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations.

Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic

strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a **list of voters and their addresses which may be used to communicate with them.** *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordan Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that with 7 days of the date of this Decision 3 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the Regional Office, 901 Market Street, Suite 400, San Francisco, California 94103, on or before June 4, 2004. No extension of time to file this list shall be

granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, 1099-14th Street, NW, Washington, DC 20570-0001**. This request must be received by the Board in Washington by June 11, 2004.

Dated at San Francisco, California, this 28th day of May, 2004.

Robert H. Miller, Regional Director
National Labor Relations Board
Region 20
901 Market Street, Suite 400
San Francisco, CA 94103-1735